



**RESEARCH DATA USE AGREEMENT**

This Agreement is made effective as of \_\_\_\_\_, 20\_\_ (“Effective Date”) between \_\_\_\_\_, with a principal place of business at \_\_\_\_\_ (“Company”), and Massachusetts Institute of Technology, with a principal place of business at 77 Massachusetts Avenue, Cambridge, Massachusetts 02139-4307 USA (“MIT”), in anticipation of Company’s disclosure of Confidential Data, as defined below, to MIT relating to the field and for the purpose identified below:

Field: \_\_\_\_\_

Purpose: \_\_\_\_\_

Primary Technical Contact(s) for disclosure of Confidential Data for Company:

1. \_\_\_\_\_ Email: \_\_\_\_\_

2. \_\_\_\_\_ Email: \_\_\_\_\_

Primary Technical Contact(s) for receipt of Confidential Data for MIT:

1. \_\_\_\_\_ Email: \_\_\_\_\_

2. \_\_\_\_\_ Email: \_\_\_\_\_

This Agreement applies to data and/or information disclosed between the Effective Date and \_\_\_\_\_, 20\_\_ (“End Date”), unless earlier terminated or extended by mutual written agreement.

In consideration of Company making data and/or information available to MIT, the parties hereby agree as follows:

1. **CONFIDENTIAL DATA.** When used in this Agreement, the term “Confidential Data” means confidential and proprietary data and/or information disclosed by Company to MIT that (i) prior to disclosure, is marked with a legend indicating its confidential status or (ii) is disclosed orally or visually, if Company identifies such data and/or information as confidential at the time of disclosure and, within 30 days of such disclosure, delivers to MIT’s Primary Technical Contact a notice summarizing the confidential data and/or information disclosed. Notwithstanding the foregoing, in no event is data or information Confidential Data if it (a) was in MIT’s possession before receipt from Company; (b) is or becomes a matter of public knowledge through no fault of MIT; (c) is received by MIT, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the data and/or information to MIT; or (d) is independently developed by MIT without use of Company’s Confidential Data. For purposes of this Agreement, MIT students and visiting students are not third parties vis à vis MIT.
2. **LIMITATIONS ON USE.** MIT shall use Company’s Confidential Data solely for the Purpose. MIT a) shall not identify Company as the provider of the Confidential Data without its written permission and b) shall disguise the name of Company and the names of its employees, clients and suppliers in all materials generated from the research by MIT that will be disclosed to any third party, publicly or otherwise (including but not limited to theses, reports, papers, journal articles, case studies, or public presentations, hereinafter “Publications”). In Publications, MIT may analyze and interpret the Confidential Data and may aggregate the Confidential Data with data and/or information from other sources for the Purpose, but shall not disclose the Confidential Data in unmodified form or any form that renders the Confidential Data identifiable as having been provided by Company. Disclosure by Company of its Confidential Data does not constitute a grant to MIT of any right or license to such Confidential Data, except as set forth herein.

Notwithstanding anything to the contrary in this Agreement, MIT shall not receive any personally-identifiable information from Company and will not perform any analysis using data provided by Company either alone or in combination with other data sources, that results in the derivation of any personally-identifiable information.

For purposes of this Agreement, personally-identifiable information is any information that, when used alone or combined with other data, may be used to identify individuals, including Company employees, clients, suppliers, and/or other third parties, and which includes, but is not limited to, an individual's name, mailing address, email address, phone number, account information, title, birth date, gender, occupation, or other information that is unique to or that permits identification of that individual.

3. **CARE OF CONFIDENTIAL DATA.** MIT shall exert reasonable efforts to maintain Company Confidential Data in confidence, except that MIT may disclose or permit disclosure of any Company Confidential Data to MIT employees, students and/or collaborators who need to know such Confidential Data to fulfill the Purpose and who have been advised of and have agreed to maintain the Confidential Data in confidence in accordance with the terms of this Agreement. MIT shall be deemed to have discharged its obligations hereunder provided MIT has exercised the foregoing degree of care and provided further that MIT shall immediately notify Company upon discovery of any disclosure not authorized hereunder and take reasonable steps to prevent any further unauthorized disclosure or unauthorized use.
4. **REQUIRED DISCLOSURES.** Nothing in this Agreement shall be construed to prevent MIT from disclosing Confidential Data as required by law or legal process, as long as MIT, if permitted by applicable law, promptly notifies Company of its obligation to disclose and provides reasonable cooperation to Company in any efforts to contest or limit the scope of such order or subpoena the disclosure.
5. **PUBLICATIONS.** MIT shall provide a copy of any proposed Publication to Company to allow Company 30 days (the "Review Period") to identify any Confidential Data that is disclosed in such Publication other than as permitted by Section 2 of this Agreement. During the Review Period, Company shall have the right to request that MIT delete specifically identified Confidential Data from the Publication. At MIT's request, Company will assist MIT in good faith to modify the Publication to prevent the disclosure of Confidential Data while preserving the integrity of the research and the Publication. MIT shall delete all specifically identified Confidential Data from the proposed Publication if the Confidential Data cannot be disguised to satisfy the requirements of Section 2 of this Agreement. The issue of data interpretation remains solely the responsibility of MIT. At the end of the Review Period, MIT shall have the right to proceed with public disclosure of the Publication. For the avoidance of doubt, once a Publication has been reviewed, it may be disclosed in substantially the same form on multiple occasions without additional review by Company. MIT shall provide final copies of all Publications to Company. Unless otherwise specified in writing by MIT on a case-by-case basis, Company shall have the right to copy and distribute additional copies of, or excerpts from, all Publications released by MIT for public distribution, provided that Company shall ensure MIT credits and copyrights are displayed or referenced in connection with such distribution and provided that Company does not sell or charge any fee for such copies or excerpts of MIT Publications delivered to Company as described herein.
6. **USE OF NAMES.** Company and its affiliates shall not use the name "Massachusetts Institute of Technology", or any variation, adaptation, or abbreviation thereof, or the name of any of MIT's trustees, officers, faculty members, students, employees, or agents, or any trademark owned by MIT, in any promotional material or other public announcement or disclosure without the prior written consent of MIT's Technology Licensing Office, which consent MIT may withhold in its sole discretion.
7. **NO WARRANTY.** All Confidential Data is provided "as is." Company makes no warranty, expressed or implied, regarding the accuracy, completeness, suitability or performance of Confidential Data disclosed under this Agreement.

MIT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE PURPOSE OR ANY INTELLECTUAL PROPERTY RIGHTS AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF MIT OR THIRD PARTIES, VALIDITY, ENFORCEABILITY AND SCOPE OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

IN NO EVENT SHALL EITHER PARTY, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS OR AFFILIATES, BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR LOST PROFITS, REGARDLESS OF WHETHER THE PARTY WAS

ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING. THIS SECTION 7 SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

- 8. **OBLIGATION OF CONFIDENTIALITY.** MIT's obligations with respect to use and non-disclosure of Company Confidential Data received hereunder shall survive for a period of three years following receipt of the information.
- 9. **TERMINATION.** Either party may terminate without cause by providing at least 30 days notice to the other party.
- 10. **RETURN OR DESTRUCTION OF CONFIDENTIAL DATA.** Following expiration or termination of this Agreement, MIT shall, at the request of Company, either destroy or return to Company all documents, materials, and other tangible manifestations of Company Confidential Data and shall destroy any electronic or digital manifestations of Company Confidential Data, except that MIT may retain one copy of the Confidential Data solely for the purposes of monitoring its obligations under this Agreement and validating the research based upon the Confidential Data.
- 11. **NOTICES.** Any notices to be given under this Agreement, other than those contemplated by Section 1, shall be in writing and addressed to the parties as shown below. Notices shall be delivered personally, by certified or registered first class mail (air mail if not domestic), by commercial courier service or by email, including a pdf image delivered by email, and shall be deemed to have been given or made as of the date received.

<b>FOR:</b>	<b>MIT</b>	<b>FOR:</b>	<b>COMPANY</b>
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Organization:	Office of Sponsored Programs	Organization:	_____
Address:	77 Massachusetts Ave., NE18-901	Address:	_____
City, State, Zip:	Cambridge, MA 02139	City, State, Zip:	_____
Phone:	_____	Phone:	_____
Email:	_____	Email:	_____

**12 MISCELLANEOUS PROVISIONS**

- 12.1 **Export Control.** Company covenants and warrants that it will not disclose to MIT any data and/or information that contains information, technology or data subject to the ITAR (22 CFR 120-130), identified on the Commerce Control List (15 CFR 774) or subject to other export controls including NRC (10 CFR 110) and DoE (10 CFR 810), unless and until Company obtains the written consent of MIT. In the case of MIT, written consent must be executed by MIT's Export Control Officer.
- 12.2 **CREATE Act.** For the purposes of the Cooperative Research and Technology Enhancement Act of 2004, the parties agree that this Agreement is not considered a joint research agreement.
- 12.3 **No Agency or Future Commitment.** The parties do not intend that any agency, partnership, joint venture, or exclusive relationship is created between the parties by this Agreement, and each party is free to pursue relationships and opportunities with others similar to those contemplated by this Agreement. Nothing in this Agreement shall be construed as obligating the parties to enter into any subsequent agreement or relationship.
- 12.4 **Assignment.** This Agreement may not be assigned by either party without the other party's prior written consent.
- 12.5 **Severability.** The provisions of this Agreement are severable. In the event any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions hereof and the provision shall be reformed to be enforceable and reflect as closely as possible the intent of the original provision.
- 12.6 **Waiver.** Any waiver of compliance with the terms of this Agreement must be in writing, and any waiver in one instance shall not be deemed a waiver in any future instance.
- 12.7 **Governing Law.** The interpretation and validity of this Agreement and the rights of the parties shall be governed by the laws of the Commonwealth of Massachusetts.
- 12.8 **Counterparts.** This Agreement and any amendment hereto may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument. For

purposes of executing this Agreement or any amendment hereto, a facsimile copy, including a PDF image delivered via email, including signed signature pages, will be deemed an original.

12.9 **Entire Agreement/Amendment.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by a written instrument signed by an authorized representative of each party.

**Executed as of the Effective Date:**

**COMPANY**

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

By: \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE